BALANCED BUDGET RECONCILIATION/Excess Pension Funds

SUBJECT: **Balanced Budget Reconciliation Act of 1995 . . . S. 1357. Kennedy/Kassebaum amendment No. 2981.**

ACTION: AMENDMENT AGREED TO, 95-4

SYNOPSIS: As reported, S. 1357, the Balanced Budget Reconciliation Act of 1995, will result in a balanced budget in seven years, as scored by the Congressional Budget Office (CBO). The bill will also provide a $245 billion middle-class tax cut, $141.4 billion of which will be to provide a $500 per child tax credit.

The Kennedy/Kassebaum amendment would strike section 12807. Section 12807 will allow excess pension fund assets for defined benefit plans to be used to fund certain Employee Retirement Income Security Act (ERISA)-protected employee benefit plans. The minimum amount that will have to be kept on these deemed benefit plans will range from 125 percent of the amount needed to meet current year obligations to about 150 percent. The only ERISA-protected funds that will be eligible for these transferred funds will be retirement funds (including underfunded retirement plans), active and retiree health plans, child care plans, disability funds, and educational assistance plans.

Those favoring the amendment contended:

The Kennedy/Kassebaum amendment would strike an unjustified raid on pension funds and the Federal Treasury. In 1990, to stop the corporate raids on pension funds that were going on in the merger-frenzy of the 1980s, Congress imposed a 50-percent excise tax on pension fund reversions (a reversion is when a company takes assets from a pension plan for non-plan uses). This bill will eliminate that tax for reversions of funds that are in excess of 125 percent of the current year's obligations. As a result, companies that have good years will logically overfund their pension funds in order to avoid taxes on their earnings, and in poor years will withdraw funds to cover expenses. The fact that the bill will require excess funds to be used only to fund other ERISA plans is just a fig leaf; those other plans will be funded either way. Money is fungible for businesses just as it is for governments. If pension fund money is spent on other ERISA plans, the money that was going to have been spent on those plans will be spent elsewhere. In years

(See other side)

YEAS (95)				NAYS (4)		NOT VOTING (0)	
Republican (49 or 92%)		Democrats (46 or 100%)		Republicans (4 or 8%)	Democrats (0 or 0%)	Republicans (0)	Democrats (0)
Abraham	Helms	Akaka	Inouye	Brown			
Ashcroft	Hutchison	Baucus	Johnston	Grams			
Bennett	Inhofe	Biden	Kennedy	Nickles			
Bond	Jeffords	Bingaman	Kerrey	Roth			
Burns	Kassebaum	Boxer	Kerry				
Campbell	Kempthorne	Bradley	Kohl				
Chafee	Kyl	Breaux	Lautenberg				
Coats	Lott	Bryan	Leahy				
Cochran	Lugar	Bumpers	Levin				
Cohen	Mack	Byrd	Lieberman				
Coverdell	McCain	Conrad	Mikulski				
Craig	McConnell	Daschle	Moseley-Braun				
D'Amato	Murkowski	Dodd	Moynihan				
DeWine	Pressler	Dorgan	Murray				
Dole	Santorum	Exon	Nunn				
Domenici	Shelby	Feingold	Pell				
Faircloth	Simpson	Feinstein	Pryor				
Frist	Smith	Ford	Reid				
Gorton	Snowe	Glenn	Robb				
Gramm	Specter	Graham	Rockefeller				
Grassley	Stevens	Harkin	Sarbanes				
Gregg	Thomas	Heflin	Simon				
Hatch	Thompson	Hollings	Wellstone				
Hatfield	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

in which companies do more poorly, pension funds will not have large enough surpluses to withstand contingent events such as plant shutdowns. They will especially not have enough funds if their problems are part of a general market slowdown, because the value of their pension investments will plummet at the same time as the company itself does poorly. In fact, a Pension Benefit Guarantee Corporation (PBGC) study of 10 large plans revealed that a 125 percent cushion such as proposed in this bill would cover only 90 percent of the amount needed to pay benefits upon plan termination. The PBGC would have to make up the difference. Of course, such contingent events are usually planned for ahead of time. Companies will quickly realize that when they decide to shut down they will be able to rob their employees pension funds on the way out the door. In summary, this section on pension funds is bad both for workers and for the government. We therefore urge the adoption of the Kennedy/Kassebaum amendment to strike it.

Those opposing the amendment contended:

Under defined benefit plans, excess pension funds are the property of the companies that run the plans, not the employees. The employees can only lay claim to the amount that they are due under their plans. Upon plan termination, any excess amount reverts to the companies. We share our colleagues' concern with protecting the safety of employee pension plans, but this bill does not in any way jeopardize such plans. In fact, it provides substantial new security for workers by providing that excess funds in pension plans may be used to protect other ERISA-protected worker benefit plans. That use is the only use that will be made of these excess funds. Further, some Senators seem unaware of the other provisions that will be enacted to protect pension funds. First, no funds may be transferred that will lower funding below 125 percent. For most companies (75 percent) the limit will be much higher. Second, plans that are at the full funding limit will not be permitted to make new contributions. Third, plan trustees will be required to use a plan asset valuation method that results in the largest asset cushion. Trustees will be required to guard against fluctuations in interest rates and stock market values by using January 1, 1995 or the most recent valuation date before the transfer, whichever results in the largest asset cushion. President Clinton made this same proposal last year in the Retirement Protection Act of 1994. Frankly, we are surprised at the opposition to this commonsense proposal, and therefore urge our colleagues to reject this amendment.